

TITLE 327 WATER POLLUTION CONTROL BOARD

Draft Rule Proposed for Preliminary Adoption

LSA Document #09-213

DIGEST

Adds 327 IAC 15-16 concerning concentrated animal feeding operations (CAFO). Repeals 327 IAC 5-4-3, 327 IAC 5-4-3.1, and 327 IAC 15-15. Effective 30 days after filing with the Publisher.

HISTORY

First Notice of Comment Period: April 8, 2009, Indiana Register (20090408-IR-327090213FNA).

Second Notice of Comment Period: August 11, 2010, Indiana Register (20100811-IR-327090213SNA).

First Public Hearing Notice: August 11, 2010, Indiana Register (DIN: 20100811-IR-327090213PHA).

Change of First Public Hearing Notice: October 20, 2010, Indiana Register (DIN: 20101020-IR-327090213CHA).

SECTION 1. 327 IAC 15-16 IS ADDED TO READ AS FOLLOWS:

Rule 16. Concentrated Animal Feeding Operations (CAFOs)

327 IAC 15-16-1 Purpose and applicability

Authority: IC 13-14-8-1; IC 13-18-10-4

Affected: IC 13-11-2; IC 13-14-12; IC 13-18; IC 13-30

Sec. 1. (a) This rule:

(1) incorporates by reference federal NPDES concentrated animal feeding operation (CAFO) regulations;

(2) requires construction, operational, and land application standards for CAFOs; and

(3) describes how to be removed from the CAFO permitting program.

(b) This rule applies to all of the following:

(1) All CAFOs defined as CAFOs under 40 CFR 122.23(c) that discharge to waters of the state.

(2) AFOs designated as CAFOs under 40 CFR 122.23(c) that discharge to waters of the state.

(3) AFOs electing to be subject to this rule.

(c) An owner/operator of a facility listed in subsection (b) must obtain permit coverage under this rule.

(d) The discharge of manure, litter, or process wastewater from a CAFO to waters of the state as a result of land application of manure, litter, or process wastewater by the CAFO to land application areas under the control of the CAFO owner or operator is a discharge subject to NPDES permit requirements under this rule, except where it is an agricultural storm water discharge.

(Water Pollution Control Board; 327 IAC 15-16-1)

327 IAC 15-16-2 Incorporation by reference

Authority: IC 13-14-8-1; IC 13-18-10-4

Affected: IC 13-11-2; IC 13-14-12; IC 13-18; IC 13-30

Sec. 2. (a) The following are incorporated by reference, revised as of July 1, 2009, except as provided in subsection (c):

- (1) 40 CFR 122.21.
- (2) 40 CFR 122.23.
- (3) 40 CFR 122.42(e).
- (4) 40 CFR 122.63(h).
- (5) 40 CFR 412.

(b) Federal regulations that have been incorporated by reference do not include any later amendments than those specified in the incorporation citation in subsection (a). Sales of the Code of Federal Regulations are handled by the Government Printing Office, P.O. Box 979050, St. Louis, MO 63197-9000, or online at <http://bookstore.gpo.gov/>. The incorporated materials are available for public review at the offices of the department of environmental management.

(c) The following are exceptions to the incorporations by reference in subsection (a):

(1) Remove the following phrases wherever they occur:

- "proposes to discharge"
- "or proposes to discharge"
- "propose to discharge"
- "or propose to discharge"

(2) In 40 CFR 122.23(d)(1), remove "A CAFO proposes to discharge if it is designed, constructed, operated, or maintained such that a discharge will occur."

(3) Remove 40 CFR 122.23(e)(2).

(4) Remove 40 CFR 122.23(f) and substitute the following: "Any CAFO that discharges must obtain permit coverage under paragraph (d)(1) of this section."

(5) Remove 40 CFR 122.23(i).

(6) Remove 40 CFR 122.23(j).

(Water Pollution Control Board; 327 IAC 15-16-2)

327 IAC 15-16-3 Conversion of federal terms

Authority: IC 13-14-8-1; IC 13-18-10-4

Affected: IC 13-11-2; IC 13-14-12; IC 13-18; IC 13-30

Sec. 3. When used in 40 CFR, as incorporated by reference in this rule, substitute the following unless otherwise indicated:

(1) "Administrator" means the commissioner of the Indiana department of environmental management.

(2) "Agency" means the Indiana department of environmental management.

(3) "Director" means the commissioner of the Indiana department of environmental management.

(4) "Environmental protection agency" or "EPA" means the Indiana department of environmental management.

(5) "State", "authorized state", "approved state", and "approved program" means Indiana.

(6) "United States" means the state of Indiana.

(Water Pollution Control Board; 327 IAC 15-16-3)

327 IAC 15-16-4 Definitions

Authority: IC 13-14-8-1; IC 13-18-10-4

Affected: IC 13-11-2; IC 13-14-12; IC 13-18; IC 13-30

Sec. 4. The definitions contained in IC 13-11-2, 327 IAC 5-1.5, 327 IAC 15-1-2, 327 IAC 19-2 and 40 CFR 122.23 apply throughout this rule. In addition to those definitions, the following definitions apply throughout this rule:

(1) "Agricultural storm water discharge" means a precipitation related discharge from a land application area where the manure, litter, or process wastewater has been applied in accordance with this rule and site-specific nutrient management practices to ensure the agronomic utilization of the nutrients in the manure, litter, or process wastewater as provided in 33 U.S.C. 1362(14) and 40 CFR 122.23(e).

(2) "CFO approval" means a valid approval issued by the commissioner under 327 IAC 19.

(3) "Manure storage area" means any area where manure is kept. The term includes, but is not limited to, the following areas:

(A) Lagoons.

(B) Run-off ponds.

(C) Storage sheds.

(D) Stockpiles.

(E) Under house or pit storage.

(F) Liquid impoundments.

(G) Static piles.

(H) Composting piles.

(4) "NRCS 590 standard" means the Indiana Natural Resources Conservation Service (NRCS) Nutrient Management Conservation Practice Standard, Code 590, July 2001, available from the Natural Resources Conservation Service, Indiana Field Office, 6013 Lakeside Boulevard, Indianapolis, Indiana 46278-2933 or online at <http://www.in.nrcs.usda.gov/>. The standard may be viewed and copied at IDEM Office of Land Quality, 100 North Senate Avenue, Eleventh Floor, Indianapolis, Indiana.

(5) "One hundred (100) year, twenty-four (24) hour rainfall event" means a twenty-four (24) hour precipitation event with a probable recurrence interval of once in one hundred (100) years, as determined using NOAA Atlas 14, "Precipitation-Frequency Atlas of the United States, Volume 2 Version 3.0," revised 2006.*

(6) "Overflow" means the discharge of manure or process wastewater resulting from the filling of wastewater or manure storage structures beyond the point at which no more manure, process wastewater, or storm water can be contained by the structure.

(7) "Setback" means a specified distance from surface waters or potential conduits to surface waters where manure, litter, and process wastewater may not be land applied. Examples of conduits or potential conduits include, but are not limited to, the following:

(A) Open tile line intake structures.

(B) Sinkholes.

(C) Agricultural well heads.

(8) "Twenty-five (25) year, twenty-four (24) hour rainfall event" means a twenty-four (24) hour precipitation event with a probable recurrence interval of once in twenty-five (25) years, as determined using NOAA Atlas 14, "Precipitation-Frequency Atlas of the United States, Volume 2 Version 3.0," revised 2006.*

* Copies are available from the National Weather Service, Office of Hydrologic Development, 1325 East West Highway, Silver Spring, MD 20910 or online at <http://www.nws.noaa.gov/oh/hdsc/currentpf.htm>.

(Water Pollution Control Board; 327 IAC 15-16-4)

327 IAC 15-16-5 Application requirements

Authority: IC 13-14-8-1; IC 13-18-10-4

Affected: IC 13-11-2; IC 13-14-12; IC 13-18; IC 13-30

Sec. 5. (a) The owner or operator of a CAFO must submit all of the following to the department:

(1) The application for an individual NPDES permit required by 40 CFR 122.21 and 327 IAC 5-2-3 on forms provided by the department.

(2) The NPDES permit application fee of fifty dollars (\$50) required by IC 13-18-20-12. If this fee is not submitted, the permit application must be denied as provided in IC 13-18-20-12(b).

(3) The individual NPDES CAFO permit application fee of two hundred fifty dollars (\$250) required by IC 13-18-20-11.5.

(4) A list of potentially affected persons in accordance with IC 4-21.5 and 327 IAC 19-8-7.

(b) In addition to the requirements in subsection (a), when expanding the CAFO to increase animal capacity or manure containment capacity, the owner or operator must:

(1) obtain a separate construction approval under 327 IAC 19 by submitting :

(A) an application in accordance with 327 IAC 19-7-1; and

(B) the fee of one hundred dollars (\$100) required by IC 13-18-10-2(a)(5); and

(2) comply with the public notice and comment requirements of 327 IAC 19-8-7.

The department shall incorporate the construction approval into the NPDES CAFO permit.

(c) The department shall process the application in accordance with 327 IAC 5-3.

(Water Pollution Control Board; 327 IAC 15-16-5)

327 IAC 15-16-6 Permit term and renewal

Authority: IC 13-13-5-1; IC 13-15-1-2; IC 13-15-2-1

Affected: IC 13-18-10

Sec. 6. (a) A permit issued under this rule is effective for a period of five (5) years from the date the permit is issued by the department.

(b) To obtain renewal of coverage under this rule, the information required under 40 CFR 122.21 shall be submitted to the department no later than one hundred eighty (180) days before the expiration of coverage under the permit.

(c) The permittee must submit an application in accordance with section 5 of this rule to renew a permit.

(Water Pollution Control Board; 327 IAC 15-16-6)

327 IAC 15-16-7 Performance standards and effluent limitations

Authority: IC 13-14-8-1; IC 13-18-10-4

Affected: IC 13-11-2; IC 13-14-12; IC 13-18; IC 13-30

Sec. 7. (a) All permitted CAFOs must comply with the requirements of 327 IAC 19-3-1.

(b) Animals in any confinement area must not have direct access to waters of the state.

(c) There shall be no discharge of process wastewater pollutants to waters of the state, except as described in subsection (d).

(d) Whenever rainfall events cause an overflow of process wastewater from a facility designed, constructed, operated, and maintained to contain all process wastewater generated in addition to the run-off from a twenty-five (25) year, twenty-four (24) hour rainfall event for the location of the point source, process wastewater pollutants in the overflow may be discharged

into waters, provided that the production area is operated in accordance with the additional requirements of 40 CFR 412.37(a) and 40 CFR 412.37(b).

(e) Any discharges by operations permitted under this rule are required to meet water quality standards under 327 IAC 5.

(f) Permitted CAFOs must meet the following requirements and effluent limitations for the CAFO production areas as of the date of permit coverage:

(1) There must be no discharge of manure, litter, or process wastewater pollutants to waters of the state.

(2) Whenever rainfall events cause an overflow of process wastewater from a structure designed, constructed, operated, and maintained to contain all process wastewater including the direct precipitation and run-off from a twenty-five (25) year, twenty-four (24) hour rainfall event for the location of the point source, process wastewater pollutants in the overflow may be discharged into waters, provided that the production area is operated in accordance with the requirements of subdivisions (2) and (4) through (8) of this subsection.

(3) Conduct weekly visual inspections of all of the following:

(A) Storm water diversion devices.

(B) Run-off diversion devices.

(C) Devices channeling contaminated storm water to the process wastewater and manure storage structure.

(D) Manure, litter, and process wastewater impoundments, noting the level in open surface liquid impoundments as indicated by the depth marker.

(4) Conduct daily inspection of all water lines that may come in contact with or impact manure, litter, or process wastewater in and around the production area. Such lines include drinking water lines for livestock.

(5) Correct any deficiencies found in inspections as soon as possible.

(6) Do not dispose of mortalities in a liquid manure or process wastewater system. Mortalities must be handled in such a way as to prevent the discharge of pollutants to surface water.

(7) Maintain, within the operating record required under section 12 of this rule, for a period of five (5) years from the date of creation, a complete copy of the following records:

(A) Records documenting self-inspections.

(B) Weekly records of the depth of manure and process wastewater in the open surface liquid impoundment, as indicated by the depth marker.

(C) Records of actions taken to correct deficiencies. Deficiencies not corrected within thirty (30) days of discovery must be accompanied by an explanation of the factors preventing immediate correction.

(D) Records of mortality management and practices.

(E) Records documenting the current design of any manure, litter, or process wastewater storage structures, including volume for solids accumulation, design treatment volume, total design volume, and approximate number of days of storage capacity.

(F) Records of the date, time, and estimated amount of any overflow.

(g) For the land application areas of CAFOs, the records described in 327 IAC 19-14-3(f) must be maintained in the operating record for a period of five (5) years from the date of permit coverage.

(Water Pollution Control Board; 327 IAC 15-16-7)

327 IAC 15-16-8 Design, construction and operational requirements

Authority: IC 13-14-8-1; IC 13-18-10-4

Affected: IC 13-11-2; IC 13-14-12; IC 13-18; IC 13-30

Sec. 8. All permitted CAFOs must comply with the requirements of:

- (1) 327 IAC 19-4;**
- (2) 327 IAC 19-7-6;**
- (3) 327 IAC 19-8-3(b);**
- (4) 327 IAC 19-10;**
- (5) 327 IAC 19-11-1(a);**
- (6) 327 IAC 19-12, unless an alternative design or compliance approach has been approved by the commissioner under 327 IAC 19-5-1; and**
- (7) 327 IAC 19-13;**

(Water Pollution Control Board; 327 IAC 15-16-8)

327 IAC 15-16-9 Nutrient management requirements

Authority: IC 13-13-5-1; IC 13-15-1-2; IC 13-15-2-1

Affected: IC 13-18-10

Sec. 9. (a) CAFOs must conduct manure, litter, and process wastewater testing for nitrogen and phosphorus annually. Soil sampling and testing must be conducted at a minimum of once every three (3) years. Owners or operators may use the most recent data required under 327 IAC 19-7-5 to meet this requirement after the effective date of this rule.

(b) Owners or operators shall use the protocols listed in the NRCS 590 standard for sampling and testing of soil, manure, litter, and process wastewater.

(c) When developing the nutrient management plan required by 40 CFR 122.42(e), the owner or operator shall follow the Indiana Comprehensive Nutrient Management Plan Statement of Work, April 9, 2004, available from the Natural Resources Conservation Service, Indiana Field Office, 6013 Lakeside Boulevard, Indianapolis, Indiana 46278-2933 or the department, or available online at <http://www.in.nrcs.usda.gov/>.

(d) Manure application rates must be in accordance with 327 IAC 19-14-3.

(e) Except as otherwise provided under this section, application of manure, litter, and process wastewater must be in accordance with the setbacks 327 IAC 19-14-6.

(f) Manure, litter, or process wastewater must be applied to the land in accordance with 327 IAC 19-14-4.

(g) Land application sites must be inspected to identify any field tile outlets under or immediately bordering the land application site in accordance with 327 IAC 19-14-6.

(h) Spray irrigation must be done in accordance with the requirements in 327 IAC 19-14-5.

(i) Marketing of manure must be done in accordance with the requirements of 327 IAC 19-14-7.

(j) In accordance with 40 CFR 122.42(e), the department shall public notice substantial changes to the nutrient management plan for seven (7) days after receipt of the changes. The owner/operator may not implement the changes until after closure of the comment period and notification of approval by the department.

(k) Submittal of a nutrient management plan under this section by a CAFO that meets the requirements of this section satisfies the requirements of IC 13-18-10-2.3 regarding submission of a manure management plan.

(Water Pollution Control Board; 327 IAC 15-16-9)

327 IAC 15-16-10 Annual report and general conditions

Authority: IC 13-13-5-1; IC 13-15-1-2; IC 13-15-2-1

Affected: IC 13-18-10

Sec. 10. (a) Any person with a facility subject to this rule shall submit an annual report to the commissioner by February fifteenth (15) of each year for the previous calendar year with the following information:

(1) The requirements listed in 40 CFR 122.42(e)(4).

(2) Information specified under 327 IAC 15-4-2 and 327 IAC 15-4-3 for any instance of noncompliance. If a spill occurs, the spill must be reported to the department within two (2) hours of discovery, in accordance with 327 IAC 2-6.1-7.

(b) All reports and information required to be submitted under this rule shall be signed and certified in accordance with 327 IAC 15-4-3(g).

(c) It shall not be a defense in an enforcement action that an owner or operator would have had to halt or reduce the permitted activity in order to maintain compliance with the requirements of this rule.

(d) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

(e) The owner or operator shall comply with the requirements of 327 IAC 5-2-14.

(f) The owner or operator shall give notice to the commissioner as soon as possible of any planned physical alterations or additions to the permitted facility when the alterations or additions would cause the facility to become a new source under 40 CFR 122.29(b).

(g) The owner or operator shall give notice to the commissioner of any planned change in the permitted facility or activity that may result in noncompliance with the requirements of this rule.

(Water Pollution Control Board; 327 IAC 15-16-10)

327 IAC 15-16-11 Operating record

Authority: IC 13-13-5-1; IC 13-15-1-2; IC 13-15-2-1

Affected: IC 13-18-10

Sec. 11. (a) The following information must be included, maintained, and updated in the operating record:

(1) All valid permits, modifications, and notifications.

(2) The current annual report information required under section 11 of this rule.

(3) The current emergency spill response plan required under 327 IAC 19-13-4.

(4) Marketing and distribution records for five (5) years under 327 IAC 19-14-7.

(5) Updated calculation of minimum acreage required to meet land application requirements under this rule.

(6) Maps required under 327 IAC 19-7-2.

(7) Farmstead plan required under 327 IAC 19-7-3.

(8) Records required under section 8 of this rule and 327 IAC 19-13-1(d).

(9) The storm water pollution prevention plan required under 327 IAC 19-11-1(a).

(b) Access to a minimum number of acres for land application of manure, litter, or process wastewater must be maintained and documented in the operating record at all times based on the requirements in this rule:

(1) Any acreage identified as part of the minimum required acreage for the application of manure, litter, or process wastewater that is not owned by the owner or operator of the CAFO must be documented in the operating record by land use agreements signed by the property owners on whose property the manure, litter, or process wastewater will be applied.

(2) Copies of any written waivers related to reduction of the property line setback distances by adjoining property owners.

(3) The amount of minimum acreage required to be accessible for land application may be reduced based on the amount of manure.

(Water Pollution Control Board; 327 IAC 15-16-11)

327 IAC 15-16-12 Decommissioning, ceasing operation and transfer of ownership

Authority: IC 13-14-8-1; IC 13-18-10-4

Affected: IC 13-11-2-40; IC 13-14-12; IC 13-18; IC 13-30

Sec. 12. (a) A CAFO that is decommissioning a manure storage area must do so in accordance with 327 IAC 19-15.

(b) A CAFO that is ceasing operation must do so in accordance with 327 IAC 19-16-3.

(c) Transfer of ownership of a CAFO must be done in accordance with 327 IAC 5-2-6(c).

(Water Pollution Control Board; 327 IAC 15-16-12)

327 IAC 15-16-13 Transition to the confined feeding operation program in 327 IAC 19

Authority: IC 13-14-8-1; IC 13-18-10-4

Affected: IC 13-11-2-40; IC 13-14-12; IC 13-18; IC 13-30

Sec. 13. (a) A CAFO that is no longer required to maintain an NPDES permit but meets the definition of a CFO as of the effective date of this rule must provide written notification to the commissioner of its transition into the CFO program under 327 IAC 19.

(b) Coverage under 327 IAC 19 commences on the effective date of 327 IAC 19 and remains in effect for the duration of time the NPDES permit would have been in effect but in no case longer than five (5) years.

(c) Facilities that do not submit the notification required under subsection (a) shall submit the full application for CFO approval required under 327 IAC 19-7.

(d) Written notification under subsection (a) shall be on forms provided by the department.

(Water Pollution Control Board; 327 IAC 15-16-13)

SECTION 2. THE FOLLOWING ARE REPEALED: 327 IAC 5-4-3; 327 IAC 5-4-3.1; 327 IAC 15-15.